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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 287

THE UNITED STATES OF AMERICA, APPELLANT

vs.

THE PENNSYLVANIA RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED AUGUST 19, 1938

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A [Caption omitted.]

B In United States District Court for the Eastern District of Pennsylvania

No. 7382. Dec. Term 1936

THE UNITED STATES

vs.

THE PENNSYLVANIA RAILROAD COMPANY

J. Cullen Ganey, Esq. Barnes, Biddle & Myers, Esqs.

Docket entries

1937

Mar. 6—True bill.

Mar. 17—Appearance of Barnes, Biddle & Myers, Esqs., for defendant filed.

May 27—Motion for bill of particulars filed.

Dec. 7—Argued sur motion for bill of particulars.

Dec. 15—Order of Court granting motion for bill of particulars filed.

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Mar. 21—Bill of Particulars filed.

Apr. 9—Demurrer filed.

May 19—Argued sur demurrer.

June 16—Opinion, Welsh, J., sustaining demurrer filed.

July 2—Order of Court sustaining demurrer and discharging defendant filed.

July 20—Petition for appeal to U. S. Supreme Court filed.

July 20—Order of Court allowing appeal filed.

July 20—Assignments of errors filed.

July 20—Citation allowed and issued.

July 20—Praecipe for transcript of record sur appeal filed.

July 20—Statement as to jurisdiction filed.

July 26—Citation returned: "service accepted" and filed.

July 26—Notice to appellee and acknowledgment of service of copies filed.

Aug. 2—Statement of Appellee against jurisdiction, Motion to dismiss appeal and Motion to affirm decision of this Court, filed.

1 In United States District Court

No. 7382. 1936 Session

UNITED STATES OF AMERICA

vs.

THE PENNSYLVANIA RAILROAD COMPANY

Offering, granting, and giving rebates and concessions in respect
the transportation of property in interstate commerce

Indictment

Filed March 6, 1937

The Grand Jurors of the United States of America, empaneled and sworn, in the District Court of the United States for the Eastern District of Pennsylvania, at the — Term thereof, in the year of thousand nine hundred and thirty six, and inquiring for that district upon their oaths and affirmations present:

COUNT 1

1. That at all times mentioned in this indictment The Pennsylvania Railroad Company, hereinafter called defendant, was, and is, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and had general offices at Philadelphia in the Eastern District of said state; that at all times mentioned in this indictment said defendant was a common carrier engaged in the transportation of property in interstate commerce by railroad for hire and, in conjuncion with various other common carriers by railroad for hire more particularly specified in this and in the several

2 remaining counts of this indictment, operated joint through routes, over and by means of their respective connecting railway lines, from certain points in the State of California, to Quality, Fresno, and Conejo in the County of Fresno, through the Eastern District of Pennsylvania, to a certain point on the railroad line of said defendant, to wit: Manhattan Produce Yards in the State of New Jersey; and so said defendant and said various other common carriers, at all times mentioned in this indictment, were subject to the provisions of an Act of Congress approved February 4, 1887 entitled "An Act to Regulate Commerce," and to the Acts of Congress amendatory thereof and supplementary thereto.

2. That at all times mentioned in this indictment Midstate Horticultural Company, Inc., hereinafter called Midstate, was, and is, a corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business in Fresno in said state, and was engaged in the shipping of grapes

interstate commerce over the railway lines of common carriers by railroad, including the railway lines and joint through routes of the common carriers aforesaid.

3. That throughout the period from, to wit, October 1, 1932, to, to wit, December 31, 1932, said defendant and said other common carriers more particularly specified in the next succeeding paragraph of this count of this indictment, had printed and had published and had filed with the Interstate Commerce Commission schedules and tariffs of rates and charges which named and showed the joint through rate and charge for the transportation, over their joint through route aforesaid from said Quality through the Eastern District of Pennsylvania to Manhattan Produce Yards aforesaid, of grapes in lug boxes with or without tops, in carload lots subject to a minimum carload weight of, to wit, 26,000 pounds, to be 173 cents for each 100 pounds thereof.

4. That on, to wit, October 15, 1932, Southern Pacific Company, Union Pacific Railroad Company, Terminal Railroad Association of St. Louis, Walter S. Franklin, and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, The Alton Railroad Company, and said defendant, The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 4221; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

4 5. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to said Midstate, a rebate and concession in the amount of, to wit, $282.24, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

5 COUNT 2

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 15, 1932, Southern Pacific Company, Union Pacific Railroad Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, The Alton Railroad Company, and said defendant, The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 27465; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum or, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly
6 offer, grant, and give, and cause to be offered, granted, and given, to said Midstate, a rebate and concession in the amount of, to wit, $302.09, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

7 COUNT 3

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 17, 1932, Southern Pacific Company, Union Pacific Railroad Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, The Alton Railroad Company, The Belt Railway Company of Chicago, and said defendant, The Pennsylvania

Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 15202; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to said Midstate, a rebate and concession in the amount of, to wit, $385.03, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT 4

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 17, 1932, Southern Pacific Company, Union Pacific Railroad Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, The Alton Railroad Company, The Belt Railway Company of Chicago, and said defendant, The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 822 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 807; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight

charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly
10 offer, grant, and give, and cause to be offered, granted, and given, to said Midstate, a rebate and concession in the amount of, to wit, $385.23, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

11 COUNT 5

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 17, 1932, Southern Pacific Company, Union Pacific Railroad Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, the Alton Railroad Company, The Belt Railway Company of Chicago, and said defendant, The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 32514; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to
12 said Midstate, a rebate and concession in the amount of, to wit, $384.23, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common

carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

13

COUNT 6

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 21, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Terminal Railroad Association of St. Louis, and said defendant, The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 900 lugs of grapes of an aggregate weight of, to wit, 26,100 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 19351; that on, to wit, November 2, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $451.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to said Midstate, a rebate and concession in the amount of, to wit, $479.25,

14 in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

15

COUNT 7

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 22, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Union Railway Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C.

Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, Toledo, Peoria & Western Railroad, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Indiana Harbor Belt Railroad Company, and said defendant, The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 38371; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant,
16 The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted and given, to said Midstate, a rebate and concession in the amount of, to wit, $459.90, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

17 COUNT 8

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 23, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Union Railway Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, Toledo, Peoria & Western Railroad, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Indiana Harbor Belt Railroad Company, and said defendant, The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 109; that on, to wit, December 10, 1932, at said Man-

hattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant,
18 The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to said Midstate, a rebate and concession in the amount of, to wit, $402.31, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

19

COUNT 9

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 24, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Union Railway Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, Toledo, Peoria & Western Railroad, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Indiana Harbor Belt Railroad Company, and said defendant, The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 71433; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant,
19 The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted,

and given, to said Midstate, a rebate and concession in the amount of, to wit, $341.78, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania, and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

21 COUNT 10

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 24, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Terminal Railroad Association of St. Louis, and said defendant, The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignee, certain property, to wit, 900 lugs of grapes of an aggregate weight of, to wit, 26,100 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 33483; that on, to wit, November 2, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $451.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to said Midstate, a rebate and concession in the amount of, to wit,

22 $325.35, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

23 COUNT 11

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby re-

ferred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 25, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Union Railway Company, Terminal Railroad Association of St. Louis, Walter S. Franklin, and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, Toledo, Peoria & Western Railroad, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Indiana Harbor Belt Railroad Company, and said defendant, The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 15750; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to said Midstate, a rebate and concession in the amount of, to wit, $302.09, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT 12

The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

That on, to wit, October 26, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Union Railway Company, Terminal Railroad Association of St. Louis, Walter S. Franklin, and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, Toledo, Peoria & Western Railroad, Chicago, Milwaukee, St. Paul and Pacific Railroad Company,

Indiana Harbor Belt Railroad Company, and said defendant, The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 35385; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant,
26 The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to said Midstate, a rebate and concession in the amount of, to wit, $321.93, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

27 COUNT 13

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 27, 1932, Southern Pacific Company, Union Pacific Railroad Company, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, and said defendant, The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 900 lugs of grapes of an aggregate weight of, to wit, 26[illegible] pounds, that being a carload lot loaded in and upon a car bearing the initials and number PFE 13763; that on, to wit, December 11, 193[illegible] at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $451.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to
28 said Midstate a rebate and concession in the amount of, to wit, $431.12, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

29

COUNT 14

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 27, 1932, Southern Pacific Company, Union Pacific Railroad Company, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, and said defendant, The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 71674; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to
9 said Midstate a rebate and concession in the amount of, to wit, $350.60, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

31

COUNT 15

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 22, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Terminal Railroad Association of St. Louis, and said defendant, The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 900 lugs of grapes of an aggregate weight of, to wit, 26,100 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 71869; that on, to wit, November 2, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $451.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to said Midstate, a rebate and concession in the amount of, to wit, $387.90, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was

32 transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

33

COUNT 16

1. The facts are set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 28, 1932, Southern Pacific Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, Chicago & Illinois Midland Railway Company, Toledo, Peoria & Western Railroad, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Indiana Harbor Belt Railroad Company, and said defendant, The Pennsylvania Railroad Com-

pany, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 35349; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to said Midstate, a rebate and concession in the amount of, to wit, $321.93, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT 17

1. The facts set forth in paragraphs numbered 1, 2, and 3 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 30, 1932, Southern Pacific Company, Union Pacific Railroad Company, Walter S. Franklin and Frank Nicodemus, Jr., as Receivers of Wabash Railway Company, and said defendant, The Pennsylvania Railroad Company, did transport from said Quality over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 882 lugs of grapes of an aggregate weight of, to wit, 29,106 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 23508; that on, to wit, December 10, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $503.53 based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to said Midstate, a rebate and concession in the amount of, to wit, $321.93, in respect to the aforesaid transportation of said shipment of
36 property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

37

COUNT 18

1. The facts set forth in paragraphs numbered 1 and 2 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That throughout the period from, to wit, October 1, 1932, to, to wit, December 31, 1932, said defendant and said other common carriers more particularly specified in the next succeeding paragraph of this count of this indictment, had printed and had published and had filed with the Interstate Commerce Commission schedules and tariffs of rates and charges which named and showed the joint through rate and charge for the transportation, over their joint through route aforesaid from said Fresno through the Eastern District of Pennsylvania to Manhattan Produce Yards aforesaid, of grapes in lug boxes with or without tops, in carload lots subject to a minimum carload weight of, to wit, 260,000 pounds, to be 173 cents for each 100 pounds thereof.

3. That on, to wit, October 3, 1932, Southern Pacific Company, Union Pacific Railroad Company, Chicago Great Western Railroad Company, Indiana Harbor Belt Railroad Company, and said defendant, The Pennsylvania Railroad Company, did transport from said Fresno, over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 930 lugs of grapes of an aggregate weight of, to wit, 26,970 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 32223; that on, to wit, November 1, 1932, at said Manhattan Produce Yards, said
38 defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $466.58, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

4. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did unknowingly offer,

grant, and give, and cause to be offered, granted, and given to said Midstate, a rebate and concession in the amount of, to wit, $474.50, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Fresno, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

39

COUNT 19

1. The facts set forth in paragraphs numbered 1 and 2 of Count 1 and paragraph numbered 2 of Count 18 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 25, 1932, The Atchison, Topeka and Santa Fe Railway Company, Panhandle and Santa Fe Railway Company, and said defendant, The Pennsylvania Railroad Company, did transport from said Fresno over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 930 lugs of grapes of an aggregate weight of, to wit, 26,970 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number SFRD 25366; that on, to wit, November 3, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $466.58, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to said Midstate, a rebate and concession in the amount of, to wit, $474.30, in respect to the aforesaid transportation of said shipment of property, by said common carriers, whereby said property was transported from said Fresno, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

COUNT 20

The facts set forth in paragraphs numbered 1 and 2 of Count 1 paragraph numbered 2 of Count 18 of this indictment, which

said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 26, 1932, Southern Pacific Company, Union Pacific Railroad Company, Chicago Great Western Railroad Company, Indiana Harbor Belt Railroad Company, and said defendant, The Pennsylvania Railroad Company, did transport from said Fresno, over their joint through route aforesaid, to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 930 lugs of grapes of an aggregate weight of, to wit, 26,970 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 15848; that on, to wit, November 3, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $466.58, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to said Midstate, a rebate and concession in the amount of, to wit, $474.30, in

42 respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Fresno, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid, at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

43

COUNT 21

1. The facts set forth in paragraphs numbered 1 and 2 of Count 1 and paragraph numbered 2 of Count 18 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 26, 1932, Southern Pacific Company, Union Pacific Railroad Company, Chicago Great Western Railroad Company, The Belt Railway Company of Chicago, and said defendant, The Pennsylvania Railroad Company, did transport from said Fresno, over their joint through route aforesaid, to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 930 lugs of grapes of an aggregate weight of, to wit, 26,970 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 33162; that on, to wit, December 9, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the

Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $466.58, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given to said Midstate, a rebate and concession in the amount of, to wit,
44 $453.38, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Fresno, through the Eastern District of Pennsylvania, and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid, at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

45

COUNT 22

1. The facts set forth in paragraphs numbered 1 and 2 of Count 1 and paragraph numbered 2 of Count 18 of this indictment, which said paragraphs are hereby referred to, adopted and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 27, 1932, Southern Pacific Company, Union Pacific Railroad Company, Chicago Great Western Railroad Company, Indiana Harbor Belt Railroad Company, and said defendant, The Pennsylvania Railroad Company, did transport from said Fresno over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 930 lugs of grapes of an aggregate weight of, to wit, 26,970 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 71993; that on, to wit, December 9, 1932, said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $466.58, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1936, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to said Midstate, a rebate and concession in the amount of, to wit, $495.23, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Fresno, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to

Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

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COUNT 23

1. The facts set forth in paragraphs numbered 1 and 2 of Count 1 and paragraph numbered 2 of Count 18 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 28, 1932, Southern Pacific Company, Union Pacific Railroad Company, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, and said defendant, The Pennsylvania Railroad Company, did transport from said Fresno over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 930 lugs of grapes of an aggregate weight of, to wit, 26,040 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number PFE 38987; that on, to wit, December 11, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $450.49, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to said Midstate, a rebate and concession in the amount of, to wit, $473.38,

48 in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Fresno, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

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COUNT 24

1. The facts set forth in paragraphs numbered 1 and 2 of Count 1 and paragraph numbered 2 in Count 18 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That on, to wit, October 28, 1932, The Atchinson, Topeka and Santa Fe Railway Company, Panhandle and Santa Fe Railway Company, Terminal Railroad Association of St. Louis, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, and said defendant, The Pennsylvania Railroad Company, did transport from said Fresno over their joint through route aforesaid to said Manhattan Produce Yards, for said Midstate as consignor, certain property, to wit, 930 lugs of grapes of an aggregate weight of, to wit, 26,970 pounds, that being a carload lot, loaded in and upon a car bearing the initials and number "SFRD 26301"; that on, to wit, December 11, 1932, at said Manhattan Produce Yards, said defendant, acting upon instructions given by said Midstate, did deliver said property to the Jerome Distributing Company as consignee of said shipment, and thereafter said defendant did collect from said Midstate for the aforesaid transportation freight charges in the sum of, to wit, $466.58, based and computed upon the aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to said Midstate a rebate and concession in the amount of, to wit, $453.38, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Fresno, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT 25

1. The facts set forth in paragraphs numbered 1 and 2 of Count 1 of this indictment, which said paragraphs are hereby referred to, adopted, and incorporated as fully as if they were herein repeated.

2. That throughout the period from, to wit, October 1, 1932, to, to wit, December 31, 1932, said defendant and said other common carriers more particularly specified in the next succeeding paragraph of this count of this indictment, had printed and had published and had filed with the Interstate Commerce Commission schedules and tariffs of rates and charge for the transportation, over their joint through route aforesaid from said Conejo through the Eastern District of Pennsylvania to Manhattan Produce Yards aforesaid, of grapes in lug boxes with or without tops, in carload lots subject to a minimum carload weight of, to wit, 26,000 pounds, to be 173 cents for each 100 pounds thereof.

3. That on, to wit, October 27, 1932, The Atchison, Topeka and Santa Fe Railway Company, Panhandle and Santa Fe Railway Com-

pany, and said defendant, The Pennsylvania Railroad Company transport from said Conejo over their joint through route aforesa said Manhattan Produce Yards, for said Midstate as consignor, tain property, to wit, 930 lugs of grapes of an aggregate weight o wit, 26,040 pounds, that being a carload lot, loaded in and upon a bearing the initials and number "SFRD 15793"; that on, to wit, vember 6, 1932, at said Manhattan Produce Yards, said defend acting upon instructions given by said Midstate, did deliver said pr

52 erty to the Jerome Distributing Company as consignee of s shipment, and thereafter said defendant did collect from s Midstate for the aforesaid transportation freight charges in sum of, to wit, $450.49, based and computed upon the aforesaid r and charge of 173 cents for each 100 pounds.

4. That thereafter on, to wit, May 15, 1935, said defendant, T Pennsylvania Railroad Company, unlawfully did knowingly of grant, and give, and cause to be offered, granted, and given, to s Midstate, a rebate and concession in the amount of, to wit, $47 in respect to the aforesaid transportation of said shipment of prope by said common carriers, whereby said property was transport from said Conejo, through the Eastern District of Pennsylvania a within the jurisdiction of this Court, to Manhattan Produce Ya aforesaid at a less rate and charge than that named and provided the schedules and tariffs of said common carriers published and fi as aforesaid; contrary to the form of the statute in such case ma and provided and against the peace and dignity of the United Stat

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COUNT 26

1. The facts set forth in paragraphs numbered 1 and 2 of Count and paragraph numbered 2 of Count 25 of this indictment, which sa paragraphs are hereby referred to, adopted, and incorporated as fu as if they were herein repeated.

2. That on, to wit, October 29, 1932, The Atchison, Topeka a Santa Fe Railway Company, Panhandle and Santa Fe Railway Co pany, Walter S. Franklin and Frank C. Nicodemus, Jr., as Receive of Wabash Railway Company, and said defendant, The Pennsylvan Railroad Company, did transport from said Conejo over their joi through route aforesaid to said Manhattan Produce Yards, for sa Midstate as consignor, certain property, to wit, 930 lugs of grapes o an aggregate weight of, to wit, 26,970 pounds, that being a carlo lot, loaded in and upon a car bearing the initials and number SFR 18559; that on, to wit, December 11, 1932, at said Manhattan Produ Yards, said defendant, acting upon instructions given by said M state, did deliver said property to the Jerome Distributing Compa as consignee of said shipment, and thereafter said defendant d collect from said Midstate for the aforesaid transportation freig charges in the sum of, to wit, $466.58, based and computed upon th aforesaid rate and charge of 173 cents for each 100 pounds.

3. That thereafter on, to wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given, to
54 said Midstate, a rebate and concession in the amount of, to wit, $453.38, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Conejo, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedule and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

(S.) J. CULLEN GANEY,
United States Attorney.

PHILADELPHIA, PA., *March 5, 1937.*

[No. 7382. December Sessions, 1936. United States District Court, Eastern District of Pennsylvania. The United States of America vs. The Pennsylvania Railroad Co. True Bill. H. R. Bassler, Foreman. Indictment: Offering, granting, and giving rebates and concessions in respect of the transportation of property in interstate commerce.]

55 In United States District Court

[Title omitted.]

Motion for bill of particulars

Filed May 27, 1937

And now comes The Pennsylvania Railroad Company, the defendant named in the Indictment filed in the above proceedings, by its attorneys, Messrs. Barnes, Biddle & Myers, and moves the Court for an Order requiring the United States of America to furnish to the said defendant within a time to be therein limited, a written Bill of Particulars of the matters expressed in the Indictment, as follows:

1. Set forth the exact date, time, and place, when and where it is charged that defendant did offer, grant, and give a rebate and concession to Midstate Horticultural Company, Inc., in connection with each shipment of grapes alleged in the Indictment, together with the names of the persons acting on behalf of defendant, and to whom in the Midstate Horticultural Company, Inc., said rebates and concessions were offered, granted, and given, stating specifically whether each of said alleged rebates and concessions were granted and given pursuant to written or oral agreements; if written, set forth exact copies thereof, and, if oral, state the complete substance thereof, together with the time or times when and the place or places

where it is alleged said agreements were made, and the names of the persons acting on behalf of the respective parties.

2. Set forth each and every manner in which defendant did offer, grant, and give to Midstate Horticultural Company, Inc., said
56 rebates and concessions, stating specifically whether said rebates and concessions were offered, granted, and given in connection with a claim or claims for damage to each shipment or shipments filed by Midstate Horticultural Company, Inc., with defendant or any of the other common carriers over whose lines said shipment or shipments were transported.

3. If it is charged that defendant did offer, grant, and give to Midstate Horticultural Company, Inc., said rebates and concessions in any other manner than in connection with a claim for damages to each shipment or shipments filed by Midstate Horticultural Company, Inc., with defendant, or any other common carrier over whose line or lines said shipments were transported, state each and every manner in which the said alleged rebates and concessions were offered, granted, and given by defendant to Midstate Horticultural Company, Inc.

4. It being alleged in the Indictment that defendant did offer, grant, and give twenty-six rebates and concessions to Midstate Horticultural Company, Inc., all on the same date, to wit, May 15, 1935, state whether or not the said rebates and concessions were offered, granted, and given by one payment to Midstate Horticultural Company, Inc., by defendant, and, if by one payment, set forth the manner and place of such payment and the persons paying it on behalf of defendant, and the persons receiving it on behalf of the Midstate Horticultural Company, Inc.

And for such other and further relief as to the Court shall seem meet.

(s.) BARNES, BIDDLE & MYERS.
By ROBERT MASSEY, JR.,
Attorneys for Defendant.

MAY 27, 1937.

57 In United States District Court

[Title omitted.]

Order granting motion for bill of particulars

Filed December 15, 1937

And now, December 15th, 1937, after hearing counsel for plaintiff and defendants and due consideration had, it is

Ordered and decreed that the defendants in each of the above entitled cases be furnished with a Bill of Particulars.

By the Court.

WELSH, *J.*

38 In United States District Court

[Title omitted.]

Bill of particulars

Filed March 21, 1938

Now comes J. Cullen Ganey, United States Attorney, in and for the Eastern District of Pennsylvania, and in compliance with the order of this Honorable Court, dated December 15, 1937, requiring the Government to furnish a bill of particulars with regard to certain matters alleged in the indictment herein, says:

(1. Question.) Where was the crime committed?

1. Answer. It is assumed that defendant desires to know where the check by which payment of all rebates alleged in the twenty-six counts of the indictment was handed by a representative of the Pennsylvania Railroad to a representative of the Midstate Horticultural Company, Inc., and therefore states that the check in payment of all the rebates alleged in the said twenty-six counts of the indictment was given by a representative of the said Railroad Company to A. Setrakian, Vice-President, Secretary and General Manager of
39 the Midstate Horticultural Company in the City of New York State of New York. All of which was stated at the bar of the Court by Francis Biddle, Esquire, counsel for the Pennsylvania Railroad Company.

(2. Question.) How was rebate paid?

2. Answer. Each of the rebates specified in the twenty-six counts of the indictment were included in one check in the amount of $10,526.46, dated May 15, 1935, and drawn by the Treasurer of the Pennsylvania Railroad Company to the order of Midstate Horticultural Company, Inc.

(3. Question.) Why was it a rebate?

3. Answer. The Government contends that the Pennsylvania Railroad Company paid the loss and damage claim or claims filed against each carload shipment of Midstate Horticultural Company, Inc., without carrier liability for the alleged loss and damage, and that these claims were filed by the said Midstate Horticultural Company, Inc., and paid by the Pennsylvania Railroad Company as a convenient method of soliciting and granting a rebate or rebates.

All other matters and questions set forth in defendant's motion for bill of particulars having been abandoned by counsel for the defendant at the bar of the Court, no further answer is being made.

J. CULLEN GANEY,
United States Attorney.

60 In United States District Court

[Title omitted.]

Demurrer

Filed April 9, 1938

And now, to wit, April 9th, 1938, comes The Pennsylvania Railroad Company, the defendant in the above entitled cause, by its attorneys, Messrs. Barnes, Biddle & Myers, and demurs to the indictment returned against it in the above numbered and entitled cause, and for grounds to its demurrer to said indictment says:

1. The said indictment and the matters therein contained in manner and form as the same are therein stated are not sufficient in law, and the defendant is not bound by the law of the land to answer the same. This he is ready to verify.

2. The indictment does not allege any facts which constitute an offense against the laws of the United States.

3. The indictment does not allege any facts which give this court jurisdiction over defendant in this matter; in that it is alleged in

Counts 1 to 26 inclusive of the indictment, that on May 15,

61 1935, defendant did knowingly offer, grant and give, and cause to be offered, granted and given to the Midstate Horticultural Company, Inc., certain rebates in respect to the transportation of certain shipments, but it is not stated in the indictment that the payment of the rebates was made within the jurisdiction of this court, or in what jurisdiction the payment was made, and it further appears in all of the Counts of the indictment that the transportation of the various shipments had terminated more than two years prior to the date of payment of the alleged rebate.

4. The indictment charges the defendant with a payment in connection with granting of twenty-six separate rebates, although the date of payment for each rebate is the same, to wit, May 15, 1935. It is unlawful for the government to split up the single payment into as many parts as there were separate transactions of carriage, and make as many Counts as there are fractional payments thus produced.

Wherefore, for want of sufficient indictment defendant prays judgment on each and every Count of the indictment, and that the same may be quashed.

BARNES, BIDDLE & MYERS.
By (s) ROBERT MASSEY, JR.,
Attorneys for Defendant.

62 In United States District Court for the Eastern District of Pennsylvania

No. 7380. December Sessions, 1936

UNITED STATES OF AMERICA

vs.

MIDSTATE HORTICULTURAL COMPANY, INC., AND ARPAXAT SETRAKIAN

No. 7382. December Sessions, 1936

UNITED STATES OF AMERICA

vs.

THE PENNSYLVANIA RAILROAD COMPANY

Opinion sur demurrers to indictments

Filed June 16, 1938

WELSH, J.: The question is solely one of jurisdiction as to whether or not this is the proper district in which the case should be tried. The Act (49 U. S. C. A., Sec. 41) provides, in part, as follows:

"Every violation of this section shall be prosecuted in any Court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted * * *."

63 In Section 1 of the above referred to Act the crime is defined as follows:

"Every person or corporation, whether carrier or shipper, who shall knowingly offer, grant, or give, or solicit, accept, or receive, any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than $1,000 nor more than $20,000."

This is an indictment for rebates alleged to have been given by the Pennsylvania Railroad Company, hereinafter referred to as the Railroad, to Midstate Horticultural Company, Inc., the shipper, hereinafter referred to as Midstate. The Government filed two indictments growing out of these transactions, one against the railroad and one jointly against Midstate and Arpaxat Setrakian. The shipment covered grapes and they were shipped from various points in the West to New York. Thereafter, by reason of damage to the shipment, it became necessary for the grapes to be sold. It is alleged by the railroad that the check subsequently given to Arpaxat Setrakian was an adjustment of this loss incurred by the shippers. It is proper to mention that the full lawful rates were paid for the transportation of the various shipments, all of which terminated more than two years prior to the date of payment of the alleged rebate.

64 In an argument before the Court on the question of where the crime took place and the nature of the rebate, the Court ordered that a bill of particulars be filed. In reply thereto, the United States filed a bill of particulars stating that * * * "the check was in effect given by the Pennsylvania Railroad Company to Mr. Setrakian in the City of New York, New York * * *"

Both sides to this controversy have filed very illuminating briefs and the case argued most ably by counsel. The briefs quite extensively cite leading cases on the subject of rebates and there is, undoubtedly, some conflict of authority between the decisions of the lower courts. This Court, however, is of the opinion that our construction of the case hinges entirely on the question of jurisdiction.

If any violation of the law occurred as alleged, the case should be tried in New York. The Court is of the opinion that under all of the facts jurisdiction is not in this Court, and, so holding, the demurrers are sustained.

65 In United States District Court for the Eastern District of Pennsylvania

No. 7382. December Sessions 1936

UNITED STATES OF AMERICA

vs.

THE PENNSYLVANIA RAILROAD COMPANY

Order sustaining demurrer, etc.

Filed July 2, 1938

And now, to wit, this 23rd day of June, A. D. 1938, it is ordered that the Demurrer to the Indictment in the above entitled cause be, and the same is hereby sustained and defendant discharged without day.

By the Court.

WELSH, *J.*

66 In United States District Court

[Title omitted.]

Petition for appeal

Filed July 20, 1938

United States of America, plaintiff, by its counsel, now comes and says that on June 23, 1938, this court entered its judgment in favor of the defendant against the plaintiff, in which judgment and proceedings had prior thereto in said cause certain errors were committed to the prejudice of the plaintiff, all of which will more fully appear from the assignment of errors herewith filed.

Wherefore United States of America prays that an appeal may issue in its behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in said cause, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

(S.) J. CULLEN GANEY,
United States Attorney.
(S.) EDWARD A. KALLICK,
Asst. U. S. Attorney.

Dated this 20th day of July 1938.

67 In United States District Court

[Title omitted.]

Order allowing appeal

Filed July 20, 1938

United States of America, plaintiff, having by its counsel made and filed its petition praying an appeal to the Supreme Court of the United States from the final judgment of this Court entered June 23, 1938, and having also made and filed an assignment of errors, and having in all respects conformed to the statutes and rules of court in such case made and provided:

It is ordered and adjudged that the appeal be and the same is hereby allowed as prayed and made returnable within forty (40) days from the date hereof, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings and papers on which said final judgment was made and entered to the Supreme Court of the United States.

W. H. KIRKPATRICK,
United States District Judge.

Dated this 20 day of July, 1938.

In United States District Court

[Title omitted.]

Assignment of errors

Filed July 20, 1938

United States of America, plaintiff, by its counsel, now comes and, in connection with its petition for an appeal, files the following assignment of errors upon which it will rely in its appeal to the Supreme Court of the United States from the judgment rendered by this Court on June 23, 1938.

The District Court erred:

In sustaining the demurrer to the indictment.

In not overruling the demurrer to the indictment.

3. In holding and adjudging that jurisdiction of the offense charged in the indictment does not lie in the United States District Court for the Eastern District of Pennsylvania.

4. In failing to construe Section 1 of the Elkins Act (49 U. S. C. A. Section 41), the statute upon which the indictment is founded, as fixing jurisdiction of the offenses charged in the indictment in the United States District Court for the Eastern District of Pennsylvania.

5. In holding and adjudging that jurisdiction of the offense charged in the indictment lies solely in the United States District Court for the Southern District of New York.

69 6. In entering the order sustaining the demurrer to the indictment.

J. CULLEN GANEY,
United States Attorney.

Dated this — day of July, 1938.

Service of a copy of the foregoing assignment of errors is hereby acknowledged this — day of July, 1938.

BARNES, BIDDLE & MYERS,
Attorneys for the Pennsylvania Railroad Company, Defendant.

70 [Citation in usual form showing service on Robt. Massey, Jr., filed July 28, 1938, omitted in printing.]

71 In United States District Court

[Title omitted.]

Praecipe for transcript of record

Filed July 20, 1938

TO THE CLERK OF THE DISTRICT COURT:

Please transmit as the transcript of record in the above entitled case, the following pleadings, documents, and records to the Supreme Court of the United States:

1. Indictment.
2. Motion for bill of particulars.
3. Order granting motion for bill of particulars.
5. Bill of particulars.
6. Demurrer to indictment.
7. Opinion of the court sustaining the demurrer.
8. Order on opinion sustaining the demurrer.
9. Petition for appeal.
10. Assignment of errors.
11. Statement as to jurisdiction.
12. Order allowing appeal.
13. Notice of service on appellee of Petition for Appeal, Order Allowing Appeal, Assignment of Errors, and Statement as to Jurisdiction.

14. Citation on appeal.
15. All docket entries in their proper order.
16. Praecipe for transcript of record.
17. Clerk's certificate.

(S) J. CULLEN GANEY,
United States Attorney.

Service of a copy of the above praecipe is hereby acknowledged this — day of July, 1938.

———— ————,
Attorneys for defendant.

72 [Clerk's certificate to foregoing transcript omitted in printing.]

73 Supreme Court of the United States

Title omitted.

Statement of points and designation of record to be printed

Filed Aug. 23, 1938

I

United States of America, appellant, states that in its brief and ral argument on its appeal in the above-entitled cause it will rely pon the points stated in its assignment of errors therein.

II

The entire record in this cause as filed in this Court is necessary r consideration of the points stated by appellant, and the entire anscript of record as transmitted by the Clerk of the District ourt should be printed by the Clerk of this Court.

ROBERT H. JACKSON,
Solicitor General.

AUGUST 19TH, 1938.

Service of a copy of the above Statement of Points and Designa- n of Record to be Printed acknowledged August 19th, 1938.

BARNES, BIDDLE & MYERS,
JOSEPH ABLE LACY,
Counsel for Appellee.

File endorsement omitted.]

Endorsement on cover:] File No. 42,772. E. Pennsylvania C. U. S. Term No. 287. The United States of America, Appel- vs. The Pennsylvania Railroad Company. Filed August 19, Term No. 287 O. T. 1938.

U. S. GOVERNMENT PRINTING OFFICE 1938